

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
MAY 12, 2000 Session

**BILLY COFFELT, *pro se* v. TENNESSEE DEPARTMENT OF
CORRECTION**

**Direct Appeal from the Chancery Court for Davidson County
No. 99-1045-III; The Honorable Ellen Hobbs Lyle, Chancellor**

No. M1999-02269-COA-R3-CV - Filed October 5, 2000

This case arises from the decision of the Riverbend Maximum Security Institution Disciplinary Board which found the Appellant guilty of three separate disciplinary offenses: assault on staff – no injury, destroying state property, and escape. The Appellant filed a Petition for Common Law Writ of Certiorari with the Chancery Court of Davidson County challenging the Disciplinary Board’s decision. The trial court dismissed the Appellant’s Petition following a Motion to Dismiss or, in the alternative, for Summary Judgment filed by the Appellee.

The Appellant appeals from the dismissal of his Petition for Common-Law Writ of Certiorari filed in the Chancery Court of Davidson County. For the reasons stated herein, we affirm the trial court’s decision.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which FARMER, J., and LILLARD, J., joined.

Billy Coffelt, *Pro Se*

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, Terri L. Bernal, Assistant Attorney General, for the Appellee

OPINION

I. Facts and Procedural History

The Appellant, Billy Coffelt, is an inmate in the lawful custody of the Appellee, Tennessee Department of Correction (“TDOC”). At times relevant to this appeal, Mr. Coffelt was incarcerated at the Riverbend Maximum Security Institution in Nashville, Tennessee. He is currently incarcerated at the Brushy Mountain Correctional Complex in Petros, Tennessee.

On December 27, 1998, Mr. Coffelt and five other inmates escaped from the Riverbend Maximum Security Institution. Mr. Coffelt was apprehended and returned to Riverbend on December 28, 1998. On December 29, 1998, Mr. Coffelt was charged with assault on staff – no injury, destroying state property, and escape. The Riverbend Disciplinary Board convened on December 31, 1998 to conduct a hearing on the charges. Upon Mr. Coffelt’s request, however, the hearing was continued so that he could have an attorney present, arrange for witnesses to testify on his behalf, and ask the warden to replace the Disciplinary Board’s chairperson. On January 7, 1999, the Disciplinary Board reconvened, but the hearing was again continued to allow Mr. Coffelt to have his attorney present, file a request for witnesses pursuant to policy, and prepare his defense.

The Disciplinary Board heard the charges on January 11, 1999. Mr. Coffelt was represented by inmate advisor Danny King, and an attorney, D. Quillen, was present. Sergeant Billy McLesky, who served as both the internal affairs officer who investigated Mr. Coffelt’s escape and the reporting officer that charged Mr. Coffelt, testified against Mr. Coffelt at the hearing. Mr. Coffelt testified at the hearing, but no witnesses were present to testify on his behalf. Based on the testimony and evidence presented at the hearing, the Disciplinary Board found Mr. Coffelt guilty of assault on staff – no injury, destroying state property, and escape. The Disciplinary Board recommended punishment which included punitive segregation, fines, extension of Mr. Coffelt’s release eligibility date, and a recommendation of criminal prosecution.

Mr. Coffelt sought relief in the Chancery Court of Davidson County by filing a Petition for Common Law Writ of Certiorari pursuant to section 27-8-101 of the Tennessee Code.¹ Mr. Coffelt named TDOC, the chairman of the Disciplinary Board, and two members of the Disciplinary Board as defendants.² Mr. Coffelt asserted that the Disciplinary Board’s hearing violated his due process rights by not permitting him to call witnesses, by inadequately notifying him of the charges, and by denying him adequate representation. Mr. Coffelt also claimed that the evidence presented at the hearing did not support a finding of guilt. The Defendants filed a Motion to Dismiss for Failure to State a Claim pursuant to Rule 12, or in the alternative, a Motion for Summary Judgment pursuant to Rule 56. The trial court dismissed with prejudice Mr. Coffelt’s Petition for failure to state a claim upon which relief can be granted as to each of his claims. This appeal followed.

¹T.C.A. § 27-8-101 provides:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

²The trial court found that the only proper defendant on a common law writ of certiorari is the particular board or commission. Accordingly, TDOC alone is named as the Appellee in this appeal.

II. Law and Analysis

This appeal presents for our consideration whether Mr. Coffelt was entitled to relief pursuant to a common law writ of certiorari. It is well settled that the scope of review under the common law writ of certiorari is very narrow. Review under the writ is limited to whether “the inferior board or tribunal (1) has exceeded its jurisdiction, or (2) has acted illegally, arbitrarily, or fraudulently.” McCallen v. City of Memphis, 786 S.W.2d 633, 638 (Tenn. 1990); see also Powell v. Parole Eligibility Bd., 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994). The intrinsic correctness of the decision is not reviewable under the writ. See Arnold v. Tennessee Bd. of Paroles, 956 S.W.2d 478 (Tenn. 1997). As stated in Powell, “it is not the correctness of the decision that is subject to judicial review, but the manner in which the decision is reached.” Powell, 879 S.W.2d at 873.

Mr. Coffelt seeks review of something other than the intrinsic correctness of the disciplinary board’s actions: the alleged denial of due process by the Disciplinary Board. Mr. Coffelt claims that the Disciplinary Board violated his due process rights by not allowing him to present witnesses, by failing to provide him with adequate notice, and by denying him effective representation.³ A lower board or tribunal’s decision is subject to judicial review under the common law writ of certiorari if the lower board or tribunal “acted in violation of constitutional or statutory provisions or in excess of its own statutory authority; has followed unlawful procedure or been guilty of arbitrary or capricious action; or has acted without material evidence to support its decision.” Watts v. Civil Service Bd., 606 S.W.2d 274, 277 (Tenn. 1980). Because Mr. Coffelt presents a claim that the Disciplinary Board violated his constitutional due process rights rather than a claim as to the intrinsic correctness of the decision, his claim is subject to judicial review under the common law writ of certiorari.

We must first address the necessary procedural requirements for a constitutionally adequate Disciplinary Board hearing. The United States Supreme Court has held that a prisoner retains constitutional rights even upon incarceration; however, the “full panoply of rights” afforded defendants in criminal prosecutions does not extend to prisoners subject to disciplinary proceedings. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974). The minimum constitutional requirements that must be met are (1) written notice of the charges at least twenty-four hours prior to the hearing; (2) an opportunity to present witnesses when doing so would not be unduly hazardous to institutional safety or correctional goals; (3) an impartial decisionmaker; and (4) a written statement by the fact finders as to the evidence relied upon and the reasons for the disciplinary action. See id. at 564-66. An inmate does not have a right to either retained or appointed counsel. In situations where the inmate is illiterate or the issue is highly complex, however, the inmate may seek the aid of another inmate or receive aid from the staff. An inmate does not have a right to confrontation or cross-examination of witnesses.

³Mr. Coffelt also asserted in his Petition for Common Law Writ of Certiorari that the evidence presented before the Disciplinary Board did not support a finding of guilt. Mr. Coffelt failed to raise this claim on appeal, and thus we will not address the merits of such claim.

The Supreme Court later limited its holding in Wolff by finding that the imposition of certain disciplinary sanctions does not create a liberty interest entitling a prisoner to due process protections. An inmate is entitled to the limited due process rights provided in Wolff only when the resulting sanctions impose “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 483-85 (1995). Sandin focuses on the nature of the deprivation imposed upon the inmate. Courts have held that the following punishments do not create protected liberty interests under the Sandin standard: placement in thirty day segregated confinement, placement in five day segregated confinement suspended for sixty days, loss of six months of visitation privileges, and payment for a drug screen, see Dotson v. TDOC, No. 01A01-9811-CV-00596, 1999 WL 430405, at *1 (Tenn. Ct. App. June 29, 1999); transfer to a more severe prison facility, see Mack v. Jones, No. 03A01-9806-CV-00215, 1999 WL 172645, at *3 (Tenn. Ct. App. Mar. 24, 1999); removal from a prison job, see Blackmon v. Campbell, No. 01A01-9807-CH-00361, 1999 WL 85518, at *1 (Tenn. Ct. App. Feb. 23, 1999); and placement on lockdown, see Hawkins v. Sundquist, No. 01A01-9803-CH-00164, 1999 WL 22386, at *1 (Tenn. Ct. App. Jan. 21, 1999).

In the case at hand, the Disciplinary Board recommended punishment for Mr. Coffelt as follows: (1) punitive segregation; (2) fines; (3) extension of release eligibility date; and (4) recommendation of criminal prosecution. This punishment fails to rise to the level of imposing an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. Accordingly, Mr. Coffelt is not entitled to the limited due process rights provided by Wolff.

III. Conclusion

For the foregoing reasons, the decision of the trial court is affirmed. Costs of this appeal are taxed against the Appellant, Billy Coffelt, for which execution may issue if necessary.

ALAN E. HIGHERS, JUDGE